

COMMITTEE REPORT

MADAM PRESIDENT:

The Senate Committee on Local Government, to which was referred Senate Bill No. 232, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

- 1 Delete the title and insert the following:
- 2 A BILL FOR AN ACT to amend the Indiana Code concerning state
- 3 and local administration.
- 4 Page 1, delete lines 1 through 17, begin a new paragraph and insert:
- 5 "SECTION 1. IC 5-14-1.5-5, AS AMENDED BY P.L.177-2005,
- 6 SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 7 JULY 1, 2009]: Sec. 5. (a) Public notice of the date, time, and place of
- 8 any meetings, executive sessions, or of any rescheduled or reconvened
- 9 meeting, shall be given at least forty-eight (48) hours (excluding
- 10 Saturdays, Sundays, and legal holidays) before the meeting. This
- 11 requirement does not apply to reconvened meetings (not including
- 12 executive sessions) where announcement of the date, time, and place
- 13 of the reconvened meeting is made at the original meeting and recorded
- 14 in the memoranda and minutes thereof, and there is no change in the
- 15 agenda.
- 16 (b) Public notice shall be given by the governing body of a public
- 17 agency ~~by~~ **as follows:**
- 18 (1) **The governing body of a public agency shall give public**
- 19 **notice by** posting a copy of the notice at the principal office of the
- 20 public agency holding the meeting or, if no such office exists, at

the building where the meeting is to be held. ~~and~~

(2) The governing body of a public agency shall give public notice by delivering notice to all news media which deliver by January 1 an annual written request for such the notices not later than December 31 for the next succeeding calendar year to the governing body of the public agency. The governing body shall give notice by one (1) of the following methods, which shall be determined by the governing body:

(A) Depositing the notice in the United States mail with postage prepaid.

(B) Transmitting the notice by electronic mail, **if the public agency has the capacity to transmit electronic mail.**

(C) Transmitting the notice by facsimile (fax).

(3) This subdivision applies only to a public agency that is not a state agency (as defined in IC 4-13-1-1). The governing body of a public agency shall give public notice by delivering notice to any person (other than news media) who delivers an annual written request for the notices not later than December 31 for the next succeeding calendar year to the governing body of the public agency. The governing body shall give notice by one (1) of the following methods, which shall be determined by the governing body:

(A) Transmitting the notice by electronic mail, if the public agency has the capacity to transmit electronic mail.

(B) Publishing the notice on the public agency's web site at least forty-eight (48) hours in advance of the meeting, if the public agency has an Internet web site.

If a governing body comes into existence after ~~January 1~~, **December 31**, it shall comply with this ~~subdivision~~ **subsection** upon receipt of a written request for notice. In addition, a state agency (as defined in IC 4-13-1-1) shall provide electronic access to the notice through the computer gateway administered by the office of technology established by IC 4-13.1-2-1.

(c) Notice of regular meetings need be given only once each year, except that an additional notice shall be given where the date, time, or place of a regular meeting or meetings is changed. This subsection does not apply to executive sessions.

(d) If a meeting is called to deal with an emergency involving actual or threatened injury to person or property, or actual or threatened disruption of the governmental activity under the jurisdiction of the public agency by any event, then the time requirements of notice under this section shall not apply, but:

(1) news media which have requested notice of meetings **under subsection (b)** must be given the same notice as is given to the members of the governing body; and

(2) the public must be notified by posting a copy of the notice according to this section.

(e) This section shall not apply where notice by publication is required by statute, ordinance, rule, or regulation.

(f) This section shall not apply to:

(1) the department of local government finance, the Indiana board of tax review, or any other governing body which meets in continuous session, except that this section applies to meetings of these governing bodies which are required by or held pursuant to statute, ordinance, rule, or regulation; or

(2) the executive of a county or the legislative body of a town if the meetings are held solely to receive information or recommendations in order to carry out administrative functions, to carry out administrative functions, or confer with staff members on matters relating to the internal management of the unit. "Administrative functions" do not include the awarding of contracts, the entering into contracts, or any other action creating an obligation or otherwise binding a county or town.

(g) This section does not apply to the general assembly.

(h) Notice has not been given in accordance with this section if a governing body of a public agency convenes a meeting at a time so unreasonably departing from the time stated in its public notice that the public is misled or substantially deprived of the opportunity to attend, observe, and record the meeting."

Delete page 2.

Page 3, delete lines 1 through 9.

Page 5, delete lines 21 through 42, begin a new paragraph and insert:

"SECTION 3. IC 5-14-1.5-7.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 7.5. (a) An officer or employee of**

a public agency who knowingly and intentionally fails to perform a duty imposed on the officer or employee under this chapter by:

(1) failing to give proper notice of a regular meeting, special meeting, or executive session;

(2) taking final action outside a regular meeting or special meeting;

(3) participating in a secret ballot during a meeting;

(4) discussing in an executive session subjects not eligible for

1 **an executive session;**

2 **(5) failing to prepare a memorandum of a meeting required**
 3 **by section 4 of this chapter; or**

4 **(6) participating in at least one (1) gathering of a series of**
 5 **gatherings under section 3.1 of this chapter;**

6 **is subject to a civil penalty under this section.**

7 **(b) A court may impose a civil penalty against one (1) or more**
 8 **of the following:**

9 **(1) The officer or employee of the public agency who commits**
 10 **the violation.**

11 **(2) The public agency.**

12 **(c) The court may impose against each entity listed in subsection**
 13 **(b) the following civil penalties:**

14 **(1) Not more than one hundred dollars (\$100) for the first**
 15 **violation.**

16 **(2) Not more than five hundred dollars (\$500) for each**
 17 **additional violation.**

18 **The penalty imposed under this section is in addition to any other**
 19 **civil or criminal penalty imposed.**

20 **(d) A court shall distribute monthly to the auditor of state any**
 21 **penalties collected under this section for deposit in the education**
 22 **fund established by IC 5-14-4-14.**

23 **(e) An officer or employee of a public agency is personally liable**
 24 **for a civil penalty imposed under this section. A civil penalty**
 25 **imposed against a public agency shall be paid from the public**
 26 **agency's budget.**

27 SECTION 4. IC 5-14-3-4, AS AMENDED BY P.L.120-2008,
 28 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 29 JULY 1, 2009]: Sec. 4. (a) The following public records are excepted
 30 from section 3 of this chapter and may not be disclosed by a public
 31 agency, unless access to the records is specifically required by a state
 32 or federal statute or is ordered by a court under the rules of discovery:

33 (1) Those declared confidential by state statute.

34 (2) Those declared confidential by rule adopted by a public
 35 agency under specific authority to classify public records as
 36 confidential granted to the public agency by statute.

37 (3) Those required to be kept confidential by federal law.

38 (4) Records containing trade secrets.

39 (5) Confidential financial information obtained, upon request,
 40 from a person. However, this does not include information that is
 41 filed with or received by a public agency pursuant to state statute.

42 (6) Information concerning research, including actual research

documents, conducted under the auspices of a state educational institution, including information:

(A) concerning any negotiations made with respect to the research; and

(B) received from another party involved in the research.

(7) Grade transcripts and license examination scores obtained as part of a licensure process.

(8) Those declared confidential by or under rules adopted by the supreme court of Indiana.

(9) Patient medical records and charts created by a provider, unless the patient gives written consent under IC 16-39.

(10) Application information declared confidential by the board of the Indiana economic development corporation under IC 5-28-16.

(11) A photograph, a video recording, or an audio recording of an autopsy, except as provided in IC 36-2-14-10.

(12) A Social Security number contained in the records of a public agency.

(b) Except as otherwise provided by subsection (a), the following public records shall be excepted from section 3 of this chapter at the discretion of a public agency:

(1) Investigatory records of law enforcement agencies. However, certain law enforcement records must be made available for inspection and copying as provided in section 5 of this chapter.

(2) The work product of an attorney representing, pursuant to state employment or an appointment by a public agency:

(A) a public agency;

(B) the state; or

(C) an individual.

(3) Test questions, scoring keys, and other examination data used in administering a licensing examination, examination for employment, or academic examination before the examination is given or if it is to be given again.

(4) Scores of tests if the person is identified by name and has not consented to the release of the person's scores.

(5) The following:

(A) Records relating to negotiations between the Indiana economic development corporation, the ports of Indiana, the Indiana state department of agriculture, the Indiana finance authority, an economic development commission, a local economic development organization (as defined in IC 5-28-11-2(3)), or a governing body of a political

subdivision with industrial, research, or commercial prospects, if the records are created while negotiations are in progress.

(B) Notwithstanding clause (A), the terms of the final offer of public financial resources communicated by the Indiana economic development corporation, the ports of Indiana, the Indiana finance authority, an economic development commission, or a governing body of a political subdivision to an industrial, a research, or a commercial prospect shall be available for inspection and copying under section 3 of this chapter after negotiations with that prospect have terminated.

(C) When disclosing a final offer under clause (B), the Indiana economic development corporation shall certify that the information being disclosed accurately and completely represents the terms of the final offer.

(6) Records that are intra-agency or interagency advisory or deliberative material, including material developed by a private contractor under a contract with a public agency, that are expressions of opinion or are of a speculative nature, and that are communicated for the purpose of decision making.

(7) Diaries, journals, or other personal notes serving as the functional equivalent of a diary or journal.

(8) Personnel files of public employees and files of applicants for public employment, except for:

(A) the name, compensation, job title, business address, business telephone number, job description, education and training background, previous work experience, or dates of first and last employment of present or former officers or employees of the agency;

(B) information relating to the status of any formal charges against the employee; and

(C) the factual basis for a disciplinary action in which final action has been taken and that resulted in the employee being suspended, demoted, or discharged.

However, all personnel file information shall be made available to the affected employee or the employee's representative. This subdivision does not apply to disclosure of personnel information generally on all employees or for groups of employees without the request being particularized by employee name.

(9) Minutes or records of hospital medical staff meetings.

(10) Administrative or technical information that would jeopardize a record keeping or security system.

(11) Computer programs, computer codes, computer filing

1 systems, and other software that are owned by the public agency
2 or entrusted to it and portions of electronic maps entrusted to a
3 public agency by a utility.

4 (12) Records specifically prepared for discussion or developed
5 during discussion in an executive session under IC 5-14-1.5-6.1.
6 However, this subdivision does not apply to that information
7 required to be available for inspection and copying under
8 subdivision (8).

9 (13) The work product of the legislative services agency under
10 personnel rules approved by the legislative council.

11 (14) The work product of individual members and the partisan
12 staffs of the general assembly.

13 (15) The identity of a donor of a gift made to a public agency if:

14 (A) the donor requires nondisclosure of the donor's identity as
15 a condition of making the gift; or

16 (B) after the gift is made, the donor or a member of the donor's
17 family requests nondisclosure.

18 (16) Library or archival records:

19 (A) which can be used to identify any library patron; or

20 (B) deposited with or acquired by a library upon a condition
21 that the records be disclosed only:

22 (i) to qualified researchers;

23 (ii) after the passing of a period of years that is specified in
24 the documents under which the deposit or acquisition is
25 made; or

26 (iii) after the death of persons specified at the time of the
27 acquisition or deposit.

28 However, nothing in this subdivision shall limit or affect contracts
29 entered into by the Indiana state library pursuant to IC 4-1-6-8.

30 (17) The identity of any person who contacts the bureau of motor
31 vehicles concerning the ability of a driver to operate a motor
32 vehicle safely and the medical records and evaluations made by
33 the bureau of motor vehicles staff or members of the driver
34 licensing medical advisory board regarding the ability of a driver
35 to operate a motor vehicle safely. However, upon written request
36 to the commissioner of the bureau of motor vehicles, the driver
37 must be given copies of the driver's medical records and
38 evaluations.

39 (18) School safety and security measures, plans, and systems,
40 including emergency preparedness plans developed under 511
41 IAC 6.1-2-2.5.

42 (19) A record or a part of a record, the public disclosure of which

would have a reasonable likelihood of threatening public safety by exposing a vulnerability to terrorist attack. A record described under this subdivision includes:

(A) a record assembled, prepared, or maintained to prevent, mitigate, or respond to an act of terrorism under IC 35-47-12-1 or an act of agricultural terrorism under IC 35-47-12-2;

(B) vulnerability assessments;

(C) risk planning documents;

(D) needs assessments;

(E) threat assessments;

(F) intelligence assessments;

(G) domestic preparedness strategies;

(H) the location of community drinking water wells and surface water intakes;

(I) the emergency contact information of emergency responders and volunteers;

(J) infrastructure records that disclose the configuration of critical systems such as communication, electrical, ventilation, water, and wastewater systems; and

(K) detailed drawings or specifications of structural elements, floor plans, and operating, utility, or security systems, whether in paper or electronic form, of any building or facility located on an airport (as defined in IC 8-21-1-1) that is owned, occupied, leased, or maintained by a public agency. A record described in this clause may not be released for public inspection by any public agency without the prior approval of the public agency that owns, occupies, leases, or maintains the airport. The public agency that owns, occupies, leases, or maintains the airport:

(i) is responsible for determining whether the public disclosure of a record or a part of a record has a reasonable likelihood of threatening public safety by exposing a vulnerability to terrorist attack; and

(ii) must identify a record described under item (i) and clearly mark the record as "confidential and not subject to public disclosure under IC 5-14-3-4(b)(19)(J) without approval of (insert name of submitting public agency)".

This subdivision does not apply to a record or portion of a record pertaining to a location or structure owned or protected by a public agency in the event that an act of terrorism under IC 35-47-12-1 or an act of agricultural terrorism under IC 35-47-12-2 has occurred at that location or structure, unless

release of the record or portion of the record would have a reasonable likelihood of threatening public safety by exposing a vulnerability of other locations or structures to terrorist attack.

(20) The following personal information concerning a customer of a municipally owned utility (as defined in IC 8-1-2-1):

(A) Telephone number.

(B) Address.

(C) Social Security number.

(21) The following personal information about a complainant contained in records of a law enforcement agency:

(A) Telephone number.

(B) The complainant's address. However, if the complainant's address is the location of the suspected crime, infraction, accident, or complaint reported, the address shall be made available for public inspection and copying.

(22) Notwithstanding subdivision (8)(A), the name, compensation, job title, business address, business telephone number, job description, education and training background, previous work experience, or dates of first employment of a law enforcement officer who is operating in an undercover capacity.

(23) Records requested by an offender that:

(A) contain personal information relating to:

(i) a correctional officer (as defined in IC 5-10-10-1.5);

(ii) the victim of a crime; or

(iii) a family member of a correctional officer or the victim of a crime; or

(B) concern or could affect the security of a jail or correctional facility.

(24) Information concerning an individual less than nineteen (19) years of age who participates in a conference, meeting, program, or activity conducted or supervised by a state educational institution. The information includes the following regarding the individual or the individual's parent or guardian:

(A) Name.

(B) Address.

(C) Telephone number.

(D) Electronic mail account address.

(c) Nothing contained in subsection (b) shall limit or affect the right of a person to inspect and copy a public record required or directed to be made by any statute or by any rule of a public agency.

(d) Notwithstanding any other law, a public record that is classified

as confidential, other than a record concerning an adoption, shall be made available for inspection and copying seventy-five (75) years after the creation of that record.

(e) Notwithstanding subsection (d) and section 7 of this chapter:

(1) public records subject to IC 5-15 may be destroyed only in accordance with record retention schedules under IC 5-15; or

(2) public records not subject to IC 5-15 may be destroyed in the ordinary course of business."

Page 6, delete lines 1 through 5.

Page 8, delete lines 26 through 42, begin a new paragraph and insert:

"SECTION 5. IC 5-14-3-9.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 9.5. (a) An officer or employee of a public agency who knowingly and intentionally does any of the following is subject to a civil penalty under subsection (b):**

(1) Denies or interferes with a person's request for inspection or copying of a public record if:

(A) the person's request meets the requirements of this chapter; and

(B) the record is subject to disclosure by law.

(2) Charges a copying fee that exceeds the amount permitted by this chapter.

(3) Discloses without authorization or fails to protect information classified as confidential by state statute.

(b) A court may impose a civil penalty for a violation under subsection (a) against one (1) or more of the following:

(1) The officer or employee of the public agency who committed the violation.

(2) The public agency.

(c) The court may impose against each entity listed in subsection (b) the following civil penalties:

(1) Not more than one hundred dollars (\$100) for the first violation.

(2) Not more than five hundred dollars (\$500) for each additional violation.

The penalty imposed under this section is in addition to any other civil or criminal penalty imposed.

(d) A court shall distribute monthly to the auditor of state any penalties collected under this section for deposit in the education fund established by IC 5-14-4-14.

(e) An officer or employee of a public agency is personally liable

1 **for a civil penalty imposed under this section. A civil penalty**
 2 **imposed against a public agency shall be paid from the public**
 3 **agency's budget."**

4 Page 9, delete lines 1 through 13.

5 Page 9, line 30, delete "Money in the fund is continually".

6 Page 9, delete lines 31 through 32.

7 Page 10, line 13, delete "If" and insert **"Except as provided in**
 8 **subsection (e), if"**.

9 Page 10, line 29, delete "The" and insert **"Except as provided in**
 10 **subsection (e), the"**.

11 Page 11, between lines 7 and 8, begin a new paragraph and insert:

12 **"(e) If the redacted information in a public record is the work**
 13 **product of an attorney (as defined in IC 5-14-3-2(q)), the counselor**
 14 **may not inspect the public record with the redaction removed. If**
 15 **the notice provided by the counselor under subsection (c) requests**
 16 **disclosure of redacted information that is the work product of an**
 17 **attorney, the public agency shall do the following:**

18 **(1) Deliver the documents specified under subsection (c)(2) to**
 19 **the counselor, with the information redacted.**

20 **(2) Deliver an index to the counselor and the complainant**
 21 **that:**

22 **(A) gives the title or name of each document, or any part**
 23 **of the document, claimed to be exempt from disclosure on**
 24 **the basis that the document or any part of the document is**
 25 **the work product of an attorney;**

26 **(B) provides a description of each document that is general**
 27 **enough to explain the exemption without compromising the**
 28 **alleged reason for the exemption from disclosure;**

29 **(C) lists the reasons that each document, or any part of the**
 30 **document, is alleged to be exempt from disclosure; and**

31 **(D) fully explains why the alleged reason for exemption**
 32 **from disclosure applies to each document."**

33 Page 11, line 8, delete "(e)" and insert **"(f)"**.

34 Page 11, line 14, delete "(f)" and insert **"(g)"**.

35 Page 11, after line 17, begin a new paragraph and insert:

36 **"(h) Nothing in this section prohibits a court from conducting an**
 37 **in camera inspection of a public record under IC 5-14-3-9(h)**

- 1 **without the information redacted that is the work product of an**
- 2 **attorney (as defined in IC 5-14-3-2(q)).".**
- 3 Renumber all SECTIONS consecutively.
 (Reference is to SB 232 as introduced.)

and when so amended that said bill do pass .

Committee Vote: Yeas 11, Nays 0.

Senator Lawson C, Chairperson